SBCivil Writ Petition No.4179/2006

Kailash Raj
Vs.
State of Rajasthan & Ors.

Date of Order :: 23rd August, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.N.Kalla, for the petitioner.

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The petitioner while serving as a Constable in Rajasthan Police was served with a memorandum under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958") alleging the charges of misconduct as under:-

> "1)- आपने दिनांक 6-11-94 को वक्त 6.45 पीएम पर रेल्वे स्टेशन, उदयपुर पर ट्रेन की इन्तजार में बैठी श्रीमति कवीता राठौड के गले में हाथ डाल कर उसके गले में पहनी हुई सोने की चैन खिचने की कोशिश की ।
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> 2)- आप द्वारा श्रीमति कविता राठौड के गले से सोने की चैन खिचने की कोशिश करने पर वह चिल्लाई तो आपने उसे चाकू दिखा कर डराया।
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> 3)- आपको श्रीमति कविता राठोड के चिल्लाने की आवाज सुनकर श्री मक्खनलाल कानि. नं. 1049 रेल्वे थाना डूगंरपुर ने पकड़ा व आपको पुलिस बूथ पर ले जाकर रेल्वे थाना उदयपुर के कर्मचारी श्री अजयकुमार कानि. एवं जगदीश गिरी कानि. के सिपूर्द किया जिन्होंने आपको रेल्वे थाना उदयपुर ले जाकर थाना धिकारी के समक्ष पेश किया।
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> 4)- आपके विरूद्ध श्रीमति कविता राठोड की रिपोर्ट पर रेल्वे थाना उदयपुर में मु.नं. 29/94 धारा 392, 511 ता.हि. व 4/25

आर्म्स एक्ट में पंजिबद्ध होकर बाद अनुसंधान आपके विरूद्ध जुर्म साबित होने से जरिये चार्जशीट सं. 1/95 दिनांक 11-1-95 से आपका चालान ए.सी.जे.एम. रेल्वे कोर्ट अजमेर में पेश किया गया।"

After considering the explanation given by the petitioner an inquiry officer was appointed and regular inquiry under Rule 16 of the Rules of 1958 was conducted. During inquiry proceedings statements of Smt. Kavita Rathore, Shri Alok Rathore (husband of Smt. Kavita Rathore) and Shri Makhanlal (Constable) beside certain other persons were recorded by the inquiry officer. Smt. Kavita Rathore in quite unambiguous terms stated that the delinquent employee on 6.11.1994 when she ws sitting in waiting room at Udaipur City Railway Station tried to snatch gold chain from her neck. Shri Makhanlal also stated before the inquiry officer that he hold over the delinquent employee when he was trying to run away from the spot after making an attempt to snatch gold chain from the neck of Smt. Kavita Rathore. The inquiry officer found the petitioner guilty for the allegations levelled. The disciplinary authority after considering the inquiry and the entire record of the inquiry proceedings imposed a penalty of dismissal upon the petitioner. An appeal preferred by the petitioner too came to be rejected by the appellate authority vide order dated 1.1.2001. A review petition was also rejected by Government of Rajasthan by order dated

28.11.2001. This petition for writ is preferred by the petitioner giving challenge to the orders passed by the disciplinary authority, appellate authority and the reviewing authority.

It is pertinent to note here that for the act that was subject matter of disciplinary proceedings above was also adjudicated by a criminal trial and therein the petitioner was found guilty for the offence under Section 392/511 IPC by learned Additional Chief Judicial Magistrate (Railways), Ajmer by judgment dated 30.9.2002, accordingly he was convicted for a term of four years rigorous imprisonment. The judgment passed by learned Additional Chief Judicial Magistrate (Railways), Ajmer stood affirmed by the appellate court vide judgment dated 20.9.2004.

While giving challenge to the orders impugned the only contention of the counsel for petitioner is that the disciplinary authority erred while imposing a penalty of dismissal as the conviction recorded by the trial court and sentence given is subject matter of a revision petition pending before this Court. According to counsel for the petitioner the disciplinary authority should not have proceeded with the disciplinary proceedings during pendency of the criminal trial.

I do not find any force in the contention so raised. The petitioner was subjected to disciplinary proceedings where adequate opportunity was given to him to defend himself. The disciplinary authority on basis of material available on record gave a finding of guilty and on that basis he ordered to impose a penalty of dismissal. The scope of disciplinary proceedings and criminal trial is absolutely different. There was no reason for not proceeding with the disciplinary matter against the petitioner only on the count that he was facing a criminal trial also. Beside the above, even in criminal trial the petitioner was found guilty for a offence under Section 392/511 IPC and that judgment was also affirmed by the appellate court.

In view of it, the petition for writ is having no merit and the same, therefore, is dismissed in limine.

(GOVIND MATHUR),J.

kkm/ps.